



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R04-OAR-2021-0010; FRL-9539-01-R4]

Air Plan Approval; Alabama; Birmingham Limited Maintenance Plan for the 1997 8-Hour Ozone NAAQS

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to approve a state implementation plan (SIP) revision submitted by the State of Alabama, through the Alabama Department of Environmental Management (ADEM), via a letter dated September 15, 2020. The SIP revision includes the 1997 8-hour ozone national ambient air quality standards (NAAQS) Limited Maintenance Plan (LMP) for the Birmingham, Alabama Area (hereinafter referred to as the “Birmingham Area” or “Area”). The Birmingham Area is comprised of Jefferson and Shelby Counties. EPA is proposing to approve the Birmingham Area LMP because it provides for the maintenance of the 1997 8-hour ozone NAAQS within the Birmingham Area through the end of the second 10-year portion of the maintenance period. The effect of this action would be to make certain commitments related to maintenance of the 1997 8-hour ozone NAAQS in the Birmingham Area federally enforceable as part of the Alabama SIP.

DATES: Comments must be received on or before **[Insert date 30 days after date of publication in the FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R04-OAR-2021-0010 at <http://www.regulations.gov>. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. EPA may publish any comment received to its public docket. Do not submit electronically any information

you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e., on the web, cloud, or other file sharing system). For additional submission methods, the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

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SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Summary of EPA's Proposed Action
- II. Background
- III. Alabama's SIP Submittal
- IV. EPA's Evaluation of Alabama's SIP Submittal
 - A. Attainment Emissions Inventory
 - B. Maintenance Demonstration
 - C. Monitoring Network and Verification of Continued Attainment
 - D. Contingency Plan
 - E. Conclusion
- V. Transportation Conformity and General Conformity
- VI. Proposed Action
- VII. Statutory and Executive Order Reviews

I. Summary of EPA's Proposed Action

In accordance with the Clean Air Act (CAA or Act), EPA is proposing to approve the Birmingham Area LMP for the 1997 8-hour ozone NAAQS, adopted by ADEM on September 16, 2020, and submitted by ADEM as a revision to the Alabama SIP on September 17, 2020. In 2004, the Birmingham Area was designated as nonattainment for the 1997 8-hour ozone

NAAQS. Subsequently, in 2006, after having clean data and EPA's approval of a maintenance plan, the Area was redesignated to attainment for the 1997 8-hour ozone NAAQS. *See* 71 FR 27631 (May 12, 2006).

The Birmingham Area LMP is designed to maintain the 1997 8-hour ozone NAAQS within the Birmingham Area through the end of the second 10-year portion of the maintenance period beyond redesignation. EPA is proposing to approve the plan because it meets all applicable requirements under CAA sections 110 and 175A. As a general matter, the Birmingham Area LMP relies on the same control measures and contingency provisions to maintain the 1997 8-hour ozone NAAQS during the second 10-year portion of the maintenance period as the maintenance plan submitted by ADEM for the first 10-year period.

II. Background

Ground-level ozone is formed when oxides of nitrogen (NO_x) and volatile organic compounds (VOC) react in the presence of sunlight. These two pollutants, referred to as ozone precursors, are emitted by many types of pollution sources, including on- and off-road motor vehicles and engines, power plants and industrial facilities, and smaller area sources such as lawn and garden equipment and paints. Scientific evidence indicates that adverse public health effects occur following exposure to ozone, particularly in children and in adults with lung disease. Breathing air containing ozone can reduce lung function and inflame airways, which can increase respiratory symptoms and aggravate asthma and other lung diseases.

Ozone exposure also has been associated with increased susceptibility to respiratory infections, medication use, doctor visits, and emergency department visits and hospital admissions for individuals with lung disease. Children are at increased risk from exposure to ozone because their lungs are still developing and they are more likely to be active outdoors, which increases their exposure.¹

¹ *See* "Fact Sheet, Proposal to Revise the National Ambient Air Quality Standards for Ozone," January 6, 2010, and 27 FR 2938 (January 19, 2010).

In 1979, under section 109 of the CAA, EPA established primary and secondary NAAQS for ozone at 0.12 parts per million (ppm), averaged over a 1-hour period. *See* 44 FR 8202 (February 8, 1979). On July 18, 1997, EPA revised the primary and secondary NAAQS for ozone to set the acceptable level of ozone in the ambient air at 0.08 ppm, averaged over an 8-hour period. *See* 62 FR 38856 (July 18, 1997).² EPA set the 8-hour ozone NAAQS based on scientific evidence demonstrating that ozone causes adverse health effects at lower concentrations and over longer periods of time than was understood when the pre-existing 1-hour ozone NAAQS was set. EPA determined that the 8-hour NAAQS would be more protective of human health, especially for children and adults who are active outdoors, and individuals with a pre-existing respiratory disease, such as asthma.

Following promulgation of a new or revised NAAQS, EPA is required by the CAA to designate areas throughout the nation as attaining or not attaining the NAAQS. On April 15, 2004, EPA designated the Birmingham Area, which includes Jefferson and Shelby Counties, as nonattainment for the 1997 8-hour ozone NAAQS, and the designation became effective on June 15, 2004. *See* 69 FR 23858 (April 30, 2004). Similarly, on May 21, 2012, EPA designated areas as unclassifiable/attainment or nonattainment for the 2008 8-hour ozone NAAQS. EPA designated the Birmingham Area as unclassifiable/attainment for the 2008 8-hour ozone NAAQS. This designation became effective on July 20, 2012. *See* 77 FR 30088. On November 16, 2017, areas were designated for the 2015 8-hour ozone NAAQS. The Birmingham Area was again designated attainment/unclassifiable for the 2015 8-hour ozone NAAQS, with an effective date of January 16, 2018. *See* 82 FR 54232 (November 16, 2017).

A state may submit a request that EPA redesignate a nonattainment area that is attaining the NAAQS to attainment, and if the area has met other required criteria described in section

² In March 2008, EPA completed another review of the primary and secondary ozone NAAQS and tightened them further by lowering the level for both to 0.075 ppm. *See* 73 FR 16436 (March 27, 2008). Additionally, in October 2015, EPA completed a review of the primary and secondary ozone NAAQS and tightened them by lowering the level for both to 0.070 ppm. *See* 80 FR 65292 (October 26, 2015).

107(d)(3)(E) of the CAA, EPA may approve the redesignation request.³ One of the criteria for redesignation is to have an approved maintenance plan under CAA section 175A. The maintenance plan must demonstrate that the area will continue to maintain the NAAQS for the period extending ten years after redesignation, and it must contain such additional measures as necessary to ensure maintenance and such contingency provisions as necessary to assure that violations of the NAAQS will be promptly corrected. Eight years after the effective date of redesignation, the state must also submit a second maintenance plan to ensure ongoing maintenance of the NAAQS for an additional ten years pursuant to CAA section 175A(b) (i.e., ensuring maintenance for 20 years after redesignation).

EPA has published long-standing guidance for states on developing maintenance plans.⁴ The Calcagni memo provides that states may generally demonstrate maintenance by either performing air quality modeling to show that the future mix of sources and emission rates will not cause a violation of the NAAQS or by showing that projected future emissions of a pollutant and its precursors will not exceed the level of emissions during a year when the area was attaining the NAAQS (i.e., attainment year inventory). *See* Calcagni memo at page 9. EPA clarified in three subsequent guidance memos that certain areas could meet the CAA section 175A requirement to provide for maintenance by showing that the area was unlikely to violate the NAAQS in the future, using information such as the area's design value⁵ being well below the standard and the area having a historically stable design value.⁶ EPA refers to a maintenance plan containing this streamlined demonstration as an LMP.

³ Section 107(d)(3)(E) of the CAA sets out the requirements for redesignating a nonattainment area to attainment. They include attainment of the NAAQS, full approval of the applicable SIP pursuant to CAA section 110(k), determination that improvement in air quality is a result of permanent and enforceable reductions in emissions, demonstration that the state has met all applicable section 110 and part D requirements, and a fully approved maintenance plan under CAA section 175A.

⁴ John Calcagni, Director, Air Quality Management Division, EPA Office of Air Quality Planning and Standards, "Procedures for Processing Requests to Redesignate Areas to Attainment," September 4, 1992 (Calcagni memo).

⁵ The ozone design value for a monitoring site is the 3-year average of the annual fourth-highest daily maximum 8-hour average ozone concentrations. The design value for an ozone area is the highest design value of any monitoring site in the area.

⁶ *See* "Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas," from Sally L. Shaver, Office of Air Quality Planning and Standards (OAQPS), dated November 16, 1994; "Limited Maintenance Plan

EPA has interpreted CAA section 175A as permitting the LMP option because section 175A of the Act does not define how areas may demonstrate maintenance, and in EPA's experience implementing the various NAAQS, areas that qualify for an LMP and have approved LMPs have rarely, if ever, experienced subsequent violations of the NAAQS. As noted in the LMP guidance memoranda, states seeking an LMP must still submit the other maintenance plan elements outlined in the Calcagni memo, including: an attainment emissions inventory, provisions for the continued operation of the ambient air quality monitoring network, verification of continued attainment, and a contingency plan in the event of a future violation of the NAAQS. Moreover, a state seeking an LMP must still submit its section 175A maintenance plan as a revision to its SIP, with all attendant notice and comment procedures. While the LMP guidance memoranda were originally written with respect to certain NAAQS,⁷ EPA has extended the LMP interpretation of section 175A to other NAAQS and pollutants not specifically covered by the previous guidance memos.⁸

In this case, EPA is proposing to approve Alabama's LMP because the State has made a showing that the Area's ozone concentrations are well below the 1997 8-hour ozone NAAQS and have been historically stable and that it has met the other maintenance plan requirements. ADEM submitted this LMP for the Birmingham Area to fulfill the second maintenance plan requirement in the Act. EPA's evaluation of the Birmingham Area LMP is presented below.

In January of 2006, ADEM submitted to EPA a request to redesignate the Birmingham Area to attainment for the 1997 8-hour ozone NAAQS. This submittal included a plan to provide for maintenance of the 1997 8-hour ozone NAAQS in Birmingham through 2017 as a revision to the Alabama SIP. EPA approved the Birmingham Area's maintenance plan and the

Option for Nonclassifiable CO Nonattainment Areas," from Joseph Paisie, OAQPS, dated October 6, 1995; and "Limited Maintenance Plan Option for Moderate PM₁₀ Nonattainment Areas," from Lydia Wegman, OAQPS, dated August 9, 2001. Copies of these guidance memoranda can be found in the docket for this proposed rulemaking.

⁷ The prior memos addressed: unclassifiable areas under the 1-hour ozone NAAQS, nonattainment areas for the PM₁₀ (particulate matter with an aerodynamic diameter less than 10 microns) NAAQS, and nonattainment for the carbon monoxide (CO) NAAQS.

⁸ See, e.g., 79 FR 41900 (July 18, 2014) (approval of the second ten-year LMP for the Grant County 1971 Sulfur Dioxide maintenance area).

State's request to redesignate the Birmingham Area to attainment for the 1997 8-hour ozone NAAQS effective June 12, 2006. *See* 71 FR 27631 (May 12, 2006).⁹

Under CAA section 175A(b), states must submit a revision to the first maintenance plan eight years after redesignation to provide for maintenance of the NAAQS for ten additional years following the end of the first 10-year period. EPA's final implementation rule for the 2008 8-hour ozone NAAQS revoked the 1997 8-hour ozone NAAQS and stated that one consequence of revocation was that areas that had been redesignated to attainment (i.e., maintenance areas) for the 1997 NAAQS no longer needed to submit second 10-year maintenance plans under CAA section 175A(b). *See* 80 FR 12264, 12315 (March 6, 2015).

In *South Coast Air Quality Management District v. EPA*, the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) vacated the EPA's interpretation that, because of the revocation of the 1997 8-hour ozone NAAQS, second maintenance plans were not required for "orphan maintenance areas," i.e., areas that had been redesignated to attainment for the 1997 8-hour ozone NAAQS maintenance areas and were designated attainment for the 2008 ozone NAAQS. *South Coast*, 882 F.3d 1138 (D.C. Cir. 2018). Thus, states with these "orphan maintenance areas" under the 1997 8-hour ozone NAAQS must submit maintenance plans for the second maintenance period. Accordingly, on September 17, 2020, Alabama submitted a second maintenance plan for the Birmingham Area that shows that the Area is expected to remain in attainment of the 1997 8-hour ozone NAAQS through 2026.

In recognition of the continuing record of air quality monitoring data showing ambient 8-hour ozone concentrations in the Birmingham Area well below the 1997 8-hour ozone NAAQS, ADEM chose the LMP option for the development of a second 1997 8-hour ozone NAAQS maintenance plan. On September 16, 2020, ADEM adopted the second 10-year 1997 8-hour

⁹ After redesignation to attainment, the Birmingham area violated the NAAQS with 2004-2006 monitoring data. On February 6, 2008, Alabama submitted a SIP revision to EPA to fulfill ADEM's commitment to adopt, within 18 months of a violation of the 1997 8-hour ozone NAAQS, one or more contingency measures to help the area re-attain the standard. *See* 74 FR 37945.

ozone maintenance plan, and on September 17, 2020, ADEM submitted the Birmingham Area LMP to EPA as a revision to the Alabama SIP.

III. Alabama's SIP Submittal

As mentioned above, on September 17, 2020, ADEM submitted the Birmingham Area 1997 8-hour ozone NAAQS LMP to EPA as a revision to the Alabama SIP. The submittal includes the LMP, air quality data, emissions inventory information, and appendices as well as certification of adoption of the plan by ADEM. Appendices to the plan include EPA's Guidance Memorandum for Ozone Limited Maintenance Plans and documentation of notice, hearing, and public participation prior to adoption of the plan by ADEM on September 16, 2020. The Birmingham Area LMP does not include any additional emissions reduction measures but relies on the same emission reduction strategy as their first 10-year maintenance plan that provides for the maintenance of the 1997 8-hour ozone NAAQS through 2017. Specifically, the measures upon which the second 10-year LMP for the Birmingham Area relies include, among other things, continued implementation of federal measures (e.g., Tier 3 Motor Vehicle Emission and Fuel Standards,¹⁰ NO_x SIP Call,¹¹ and interstate transport rules such as the Cross-State Air Pollution Rule (CSAPR)¹² and CSAPR Update.)¹³

IV. EPA's Evaluation of Alabama's SIP Submittal

EPA has reviewed the Birmingham Area's LMP which is designed to maintain the 1997 8-hour ozone NAAQS within Birmingham through the end of the 20-year period beyond redesignation, as required under CAA section 175A(b). The following is a summary of EPA's interpretation of the section 175A requirements¹⁴ and EPA's evaluation of how each requirement is met.

¹⁰ See 79 FR 23414 (April 28, 2014).

¹¹ See 63 FR 57355 (October 27, 1998).

¹² See 76 FR 48208 (August 8, 2011).

¹³ See 81 FR 74504 (October 26, 2016).

¹⁴ See Calcagni memo.

A. Attainment Emissions Inventory

For maintenance plans, a state should develop a comprehensive, accurate inventory of actual emissions for an attainment year to identify the level of emissions which is sufficient to maintain the NAAQS. A state should develop this inventory consistent with EPA's most recent guidance on emissions inventory development. For ozone, the inventory should be based on typical summer day emissions of VOC and NO_x, as these pollutants are precursors to ozone formation. The Birmingham LMP instead includes an ozone attainment inventory for the Birmingham area that reflects annual emissions of VOC and NO_x in 2014. Table 1 presents a summary of the inventory for 2014 contained in the LMP.

Table 1 – 2014 VOC and NO_x Emissions for the Birmingham Area (tons/year)

	Point Source	Area Source	OnRoad Mobile Source	Nonroad Mobile Source	Total
VOC	3,899.07	78,794.64	9,587.72	4,046.32	96,327.75
NO_x	31,365.76	7,679.80	17,394.50	3,470.60	59,910.66

The Attainment Emissions Inventory section of the Birmingham Area LMP describes the methods, models, and assumptions used to develop the attainment inventory and notes that ADEM relied on version 2 of the 2014 NEI.¹⁵ Point source emissions were calculated from data collected annually from the sources and reported to the State or local air agencies. Area source emissions were estimated by multiplying an emission factor by some known indicator of collective activity, such as fuel usage, and were estimated on the county level. Nonroad mobile source emissions in the 2014NEIv2, in part, were estimated using the latest version of the EPA's motor vehicles emission model, MOVES (which includes estimates nonroad emissions like agriculture, commercial and mining, industrial and recreational equipment, and commercial and residential lawn and garden equipment). Locomotives, aircraft, and marine nonroad sources are

¹⁵ Documentation and data for the 2014 NEIv2 can be accessed via the following website: <http://www.epa.gov/air-emissions-inventories/2014-national-emissions-inventory-nei-data>.

not included in MOVES, and ADEM relied on EPA-generated emissions for these sectors.¹⁶

Onroad mobile sources in the 2014NEIv2 were estimated using MOVES and the latest planning assumptions regarding vehicle type, vehicle activity, and vehicle speeds to estimate vehicular emissions for 2014. ADEM's estimates for vehicles reflect emissions inventories and ancillary data files used for emissions modeling, as well as the meteorological, initial condition, and boundary condition files need to run the air quality model.

Although an ozone LMP would typically include an inventory of typical summer day emissions rather than annual emissions, EPA proposes to find that Alabama's annual inventory is sufficient here because the 2014 annual inventory data are consistent with 2014 summer emissions inventory data for the Birmingham Area.¹⁷ Based on our review of the methods, models, and assumptions used by Alabama to develop the inventory, as well as our review of the 2014 summer emissions data, EPA proposes to find that the Alabama 1997 ozone NAAQS LMP includes a comprehensive, reasonably accurate inventory of actual ozone precursor emissions in attainment year 2014, and proposes to conclude that this is acceptable for the purposes of a subsequent maintenance plan under CAA section 175A(b).

B. Maintenance Demonstration

The maintenance demonstration requirement is considered to be satisfied in an LMP if the state can provide sufficient weight of evidence indicating that air quality in the area is well below the level of the standard, that past air quality trends have been shown to be stable, and that the probability of the area experiencing a violation over the second 10-year maintenance period is low.¹⁸ These criteria are evaluated below with regard to the Birmingham Area.

1. Evaluation of ozone air quality levels

¹⁶ EPA developed emissions for these sectors based on AP-42 emissions factor, and information supplied by the Eastern Regional Technical Advisory Committee for locomotives and Federal Aviation Administration's Emissions and Dispersion Modeling System (since replaced by the Aviation Environmental Design Tool).

¹⁷ The 2014 summer emissions data for the Birmingham Area are from the EPA 2014 version 7.0 modeling platform, which is based on the National Emissions Inventory (2014 NEI version 2), and are available at https://www.epa.gov/sites/default/files/2018-11/ozone_1997_naaqs_emiss_inv_data_nov_19_2018_0.xlsx. The 2017 NEI is the most recent NEI, but it was unavailable to Alabama when the State developed its SIP revision.

¹⁸ See footnote 6.

To attain the 1997 8-hour ozone NAAQS, the three-year average of the fourth-highest daily maximum 8-hour average ozone concentrations (design value) at each monitor within an area must not exceed 0.08 ppm. Based on the rounding convention described in 40 CFR part 50, Appendix I, the NAAQS is attained if the design value is 0.084 ppm or below. At the time of submission, EPA evaluated quality assured and certified 2016–2018 monitoring data and determined that the design value for the Birmingham Area was 0.067 ppm, or 79 percent of the level of the 1997 8-hour ozone NAAQS. Based on quality assured and certified monitoring data for 2018–2020, the current design value for the Birmingham Area is 0.066 ppm, or 79 percent of the level of the 1997 8-hour ozone NAAQS. Consistent with prior guidance, EPA believes that if the most recent air quality design value for the area is at a level that is well below the NAAQS (e.g., below 85% of the standard, or in this case below 0.071 ppm), then EPA considers the state to have met the section 175A requirement for a demonstration that the area will maintain the NAAQS for the requisite period. Such a demonstration assumes continued applicability of prevention of significant deterioration requirements and any control measures already in the SIP and that Federal measures will remain in place through the end of the second 10-year maintenance period, absent a showing consistent with section 110(l) that such measures are not necessary to assure maintenance.

Table 2 presents the 2014–2020 design values for each monitor in the Birmingham Area. As shown in Table 2, all sites have been well below the level of the 1997 8-hour ozone NAAQS during that time period, and the most current design value is below the level of 85 percent of the NAAQS, consistent with prior LMP guidance.

Table 2 – 1997 8-Hour Ozone NAAQS 2014–2020 Design Values (ppm) at Monitoring Sites in the Birmingham Area⁺

Location	AQS Site ID	2012- 2014 DV	2013- 2015 DV	2014- 2016 DV	2015- 2017 DV	2016- 2018 DV	2017- 2019 DV	2018- 2020 DV
Helena	01-117-0004	0.068	0.065	0.067	0.066	0.067	0.066	0.065
Fairfield	01-073-1003	0.068	0.065	0.066	0.066	0.064 [^]	0.067	0.066
McAdory	01-073-1005	0.068	0.064	0.066	0.065	0.065	0.066	0.066
Hoover	01-073-2006	0.067	0.065	0.066	0.066	-	-	-

Tarrant	01-073-6002	0.070 [^]	0.067	0.068	0.068	*	*	*
Corner	01-073-5003	0.065	0.063	0.064	0.064	0.063	0.062	0.061
North Birmingham	01-073-0023	0.067	0.064	0.068	0.066	0.065	*	0.066
Leeds	01-073-1010	0.069	0.063	0.064	0.063	0.066	0.064	0.063

+ The Metropolitan Statistical Area (MSA) is required to have a minimum of two ozone monitoring sites. The MSA still maintains seven regulatory ozone monitoring sites offering adequate coverage of the MSA.

* These design values are invalid due to data completeness issues.

- The Hoover monitor (Site ID 01-073-2006) was approved to be shut down at the end of October 31, 2017, through the annual network plan review process.

[^] The data handling methodology associated with the 1997 8-hour ozone NAAQS was used to calculate these 2014-2020 DVs. Using this appropriate methodology, two DVs were calculated as being slightly lower (0.001 ppm lower) than what was included in ADEMS's submittal.

Therefore, the Birmingham Area is eligible for the LMP option, and EPA proposes to find that the long record of monitored ozone concentrations that attain the NAAQS, together with the continuation of existing VOC and NO_x emissions control programs, adequately provide for the maintenance of the 1997 8-hour ozone NAAQS in the Area through the second 10-year maintenance period and beyond.

Additional supporting information that the Area is expected to continue to maintain the NAAQS can be found in projections of future year design values that EPA recently completed for the Revised CSAPR Update for the 2008 Ozone NAAQS that EPA finalized on April 30, 2021.¹⁹ Those projections, made for the year 2023, show that the highest design value of any monitor in the Area is expected to be 0.056 ppm. EPA is not proposing to make any finding in this rulemaking regarding interstate transport obligations for any state.

2. Stability of ozone levels

As discussed above, the Birmingham Area has maintained air quality well below the 1997 8-hour ozone NAAQS over the past seven years. Additionally, the design value data

¹⁹ On April 30, 2021, EPA published the final Revised Cross-State Air Pollution (CSAPR) Update (RCU) using updated modeling that focused on analytic years 2023 and 2028 and an "interpolation" analysis of these modeling results to generate air quality and contribution values for the 2021 analytic year. See 86 FR 23054. <https://www.govinfo.gov/content/pkg/FR-2021-04-30/pdf/2021-05705.pdf>. This modeling included projected ozone design values for ozone monitors in the Birmingham maintenance area. See the spreadsheet titled "Data File with Ozone Design Values and Ozone Contributions (xlsx)" at <https://www.epa.gov/csapr/revised-cross-state-air-pollution-rule-update>.

shown within Table 2 illustrates that ozone levels have been relatively stable over this timeframe, with a modest downward trend. For example, the data within Table 2 indicates that the largest year over year change in design value at any one monitor during these seven years was six parts per billion which occurred between the 2014 and 2015 design values, representing a nine percent decrease at monitor 01-073-1010 (Leeds). Furthermore, the overall trend for the Birmingham Area shows a decrease of three percent between the 2014 and 2017 design values at the highest monitor, Tarrant monitor 01-073-6002, and shows a decrease of nine percent between the 2014 and 2020 design values at the second-highest monitor, Leeds monitor 01-073-1010. This downward trend in ozone levels, coupled with the relatively small, year-over-year variation in ozone design values, makes it reasonable to conclude that the Birmingham Area will not exceed the 1997 8-hour ozone NAAQS during the second 10-year maintenance period.

C. Monitoring Network and Verification of Continued Attainment

EPA periodically reviews the ozone monitoring network that ADEM and Jefferson County Department of Health (JCDH) operates and maintains in accordance with 40 CFR part 58. This network plan, which is submitted annually to EPA, is consistent with the most recent ambient air quality monitoring network assessment. The annual network plan developed by ADEM follows a public notification and review process. EPA has reviewed and approved the 2020 Ambient Air Monitoring Network Plan (“2020 Annual Network Plan”).²⁰

To verify the attainment status of the area over the maintenance period, the maintenance plan should contain provisions for continued operation of an appropriate, EPA-approved monitoring network in accordance with 40 CFR part 58. As noted above, ADEM and JCDH’s monitoring network in Birmingham has been approved by EPA in accordance with 40 CFR part 58, and the State and JCDH have committed to continue to maintain a network in accordance with EPA requirements. EPA proposes to find that ADEM and JCDH’s monitoring network is adequate to verify continued attainment of the 1997 8-hour ozone NAAQS in Birmingham.

²⁰ The letters approving the network plan are in the docket for this proposed rulemaking.

D. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. The purpose of such contingency provisions is to prevent future violations of the NAAQS or to promptly remedy any NAAQS violations that might occur during the maintenance period. These contingency measures are required to be implemented expeditiously once they are triggered by a future violation of the NAAQS or some other trigger. The state should identify specific triggers which will be used to determine when the contingency measures need to be implemented.

The LMP states that the initial trigger of Alabama's contingency plan is when any individual monitor in the Birmingham Area records an annual fourth high reading of 85 ppb or higher. If this trigger is activated and ambient monitoring data indicates that a violation of the 3-year design value may be imminent, the maintenance plan requires Alabama to evaluate existing control measures to determine whether any further emission reduction measures should be implemented at that time. The second contingency plan trigger will be a quality assured/quality controlled (QA/QC) violating design value of the 1997 8-hour ozone NAAQS at any monitor in the Birmingham Area.²¹ As expeditiously as possible and within 18 to 24 months after a monitored violation, Alabama will adopt and implement appropriate contingency measures needed to assure future attainment.²² In addition to at least one contingency measure being implemented upon a monitored violation, pursuant to CAA section 175A(d), all control measures in place prior to redesignation to attainment will remain in place.

EPA proposes to find that the contingency provisions in Alabama's second maintenance plan for the 1997 8-hour ozone NAAQS meet the requirements of the CAA section 175A(d).

²¹ If QA/QC data indicates a violating design value for the 8-hour ozone NAAQS, then the triggering event will be the date of the design value violation, and not the final QA/QC date. However, if initial monitoring data indicates a possible design value violation but later QA/QC indicates that a NAAQS violation did not occur, then a triggering event will not have occurred, and contingency measures will not need to be implemented.

²² See the Contingency Plan section of the LMP for further information regarding the contingency plan, including measures that Alabama will consider for adoption if a monitored violation occurs.

E. Conclusion

EPA proposes to find that the Birmingham LMP for the 1997 8-hour ozone NAAQS includes an approvable update of the various elements (including attainment inventory, assurance of adequate monitoring and verification of continued attainment, and contingency provisions) of the initial EPA-approved maintenance plan for the 1997 8-hour ozone NAAQS. EPA also proposes to find that the Birmingham Area, a former subpart 1 marginal 1997 8-hour ozone NAAQS nonattainment area, qualifies for the LMP option, and adequately demonstrates maintenance of the 1997 8-hour ozone NAAQS through the documentation of monitoring data showing maximum 1997 8-hour ozone levels below the NAAQS and historically stable design values. EPA believes the Birmingham Area's LMP, which retains all existing control measures in the SIP, is sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Area over the second maintenance period (i.e., through 2026) and thereby satisfies the requirements for such a plan under CAA section 175A(b). EPA is therefore proposing to approve Alabama's September 17, 2020, submission of the Birmingham Area 1997 8-hour ozone NAAQS LMP as a revision to the Alabama SIP.

V. Transportation Conformity and General Conformity

Transportation conformity is required by section 176(c) of the CAA. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the NAAQS. *See* CAA 176(c)(1)(A) and (B). EPA's transportation conformity rule at 40 CFR part 93 subpart A requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether they conform. The conformity rule generally requires a demonstration that emissions from the Regional Transportation Plan (RTP) and the Transportation Improvement Program (TIP) are consistent with the motor vehicles emissions budget (MVEB) contained in the control strategy SIP revision or maintenance plan. *See* 40 CFR 93.101, 93.118, and 93.124. A MVEB is defined as "the portion of the total allowable emissions defined in the submitted or

approved control strategy implementation plan revision or maintenance plan for a certain date for the purpose of meeting reasonable further progress milestones or demonstrating attainment or maintenance of the NAAQS, for any criteria pollutant or its precursors, allocated to highway and transit vehicle use and emissions.” *See* 40 CFR 93.101.

Under the conformity rule, LMP areas may demonstrate conformity without a regional emissions analysis. *See* 40 CFR 93.109(e). On February 23, 2006, EPA made a finding that the MVEBs in the first 10 years of the 1997 8-hour ozone maintenance plan for the Birmingham Area were adequate for transportation conformity purposes. *See* 71 FR 9332 (February 23, 2006). This adequacy determination became effective on March 10, 2006. After approval of this LMP or an adequacy finding for this LMP, there is no requirement to meet the budget test pursuant to the transportation conformity rule for the maintenance area. All actions that would require a transportation conformity determination for the Birmingham Area ozone maintenance area under EPA’s transportation conformity rule provisions are considered to have already satisfied the regional emissions analysis and “budget test” requirements in 40 CFR 93.118 as a result of EPA’s adequacy finding for this LMP. *See* 69 FR 40004 (July 1, 2004).

However, because LMP areas are still maintenance areas, certain aspects of transportation conformity determinations still will be required for transportation plans, programs, and projects. Specifically, for such determinations, RTPs, TIPs and transportation projects still will have to demonstrate that they are fiscally constrained (40 CFR 93.108) and meet the criteria for consultation (40 CFR 93.105) and Transportation Control Measure implementation in the conformity rule provisions (40 CFR 93.113) as well as meet the hot-spot requirements for projects (40 CFR 93.116).²³ Additionally, conformity determinations for RTPs and TIPs must be determined no less frequently than every four years, and conformity of plan and TIP amendments and transportation projects is demonstrated in accordance with the timing

²³ A conformity determination that meets other applicable criteria in Table 1 of paragraph (b) of this section (93.109(e)) is still required, including the hot-spot requirements for projects in CO, PM₁₀, and PM_{2.5} areas.

requirements specified in 40 CFR 93.104. In addition, in order for projects to be approved they must come from a currently conforming RTP and TIP. *See* 40 CFR 93.114 and 40 CFR 93.115.

VI. Proposed Action

Under sections 110(k) and 175A of the CAA and for the reasons set forth above, EPA is proposing to approve the Birmingham Area LMP for the 1997 8-hour ozone NAAQS, submitted by ADEM on September 17, 2020, as a revision to the Alabama SIP. EPA is proposing to approve the Birmingham Area LMP because it includes an acceptable update of the various elements of the 1997 8-hour ozone NAAQS maintenance plan approved by EPA for the first 10-year period and retains the relevant provisions of the SIP.

EPA also finds that the Birmingham Area qualifies for the LMP option and that, therefore, the Birmingham Area LMP adequately demonstrates maintenance of the 1997 8-hour ozone NAAQS through documentation of monitoring data showing maximum 1997 8-hour ozone levels well below the NAAQS and continuation of existing control measures. EPA believes the Birmingham Area's 1997 8-hour ozone LMP to be sufficient to provide for maintenance of the 1997 8-hour ozone NAAQS in the Birmingham Area over the second 10-year maintenance period, through 2026, and thereby satisfy the requirements for such a plan under CAA section 175A(b).

VII. Statutory and Executive Order Reviews

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. *See* 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. This action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this proposed action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

The SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications as specified by Executive Order 13175

(65 FR 67249, November 9, 2000), nor will it impose substantial direct costs on tribal governments or preempt tribal law.

List of Subjects in 40 CFR Part 52

Environmental Protection, Air Pollution Control, Incorporation by reference, Intergovernmental Relations, Nitrogen Oxides, Ozone, Reporting and Recordkeeping Requirements, Volatile Organic Compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: February 3, 2022.

Daniel Blackman,
Regional Administrator,
Region 4.

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